THE INITIATIVE AND REFERENDUM

AN EFFECTIVE ALLY

OF

REPRESENTATIVE GOVERNMENT

BY

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EIGHTH EDITION—FIRST THOUSAND.

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OUR fathers founded this government in order to secure for the people—all the people—the blessings of life, liberty and happiness. They devised institutions and machinery to that end.

To-day, after the lapse of a century and a quarter, combinations of power have grown up under these institutions in the face of which, for multitudes of our population, life is precarious, liberty practically despaired of, and happiness, except of a kind enjoyed by the Roman proletariat or the plantation slave, unknown. We know that no one would be more impatient of such conditions than our revolutionary forefathers, and no one more resolute in seeking a remedy. Honor to their memory requires us to scrutinize their work, and to modernize it if necessary, **just as they modernized their inherited institutions.**

Ideals of the Fathers Not At Fault.

Accordingly we turn first to the spirit and purposes underlying our institutions. We find nothing to criticize, even after all this time. We can suggest no improvements in this quarter. Even now we are inspired with a new

enthusiasm by the ideals expressed by our fathers in founding this Republic, the ideals so impressively reaffirmed by Lincoln at Gettysburg.

Scrutiny of their Governmental Machinery.

We turn next to the details of their governmental machinery. Little is left of their industrial methods and institutions, and perhaps their political devices too are out of date. If they are, possibly it is not too late to supplement them or replace them with better.

The legislative machinery underlies all else. We observe that our law-making is entrusted to representative bodies. The make-up of these bodies is, nominally at least, under public control, but the output (except amendments to state constitutions) is not even nominally under public control, except as such control may be exerted through pressure upon individual representatives. When we consider the extent to which such pressure is made effective to-day by the greedy and highly organized few, rather than by the merely normally interested and unorganized many, a legislative system which may have been safe once comes to look decidedly defective.

A Fundamental Defect.

Further reflection convinces us that this lack of adequate popular **control of results** is not only a defect but is *the fundamental* defect in our legislative mechanism. Its correction is therefore essential, and is logically the first step in the modernization of our political machinery. This done, improved legislation is assured as fast as the majority can agree upon it. This done, all unnecessary and undesirable obstacles to progress will have been minimized. Until this is done, we have little reason to hope for permanently better conditions, except at an utterly unreasonable cost in effort and delay. The importance of concentrating attention upon this issue is manifest.

What Can Be Done.

The next question is, How shall the public **get** adequate **control of results?**

The answer is, We must assert our natural right to revise the work of our representatives. We must do this revising ourselves. There is no one else to do it. To do it we must supplement the existing legislative machinery with a workable, orderly, and properly guarded contrivance to enable us to enact laws, to veto them, to amend them or to repeal them by direct popular vote over the head of legislatures and city councils, in the instances when these bodies fail to meet the public will. In other words, we must considerably extend the practice of direct legislation by the people, already familiar to us in the New England town-meeting, and in the popular ratification of amendments to state constitutions.

Fortunately the way to do this has been devised and tested and has met expectations on a city-wide and state-wide scale. It involves two devices developed in the last few decades, the Initiative and the Referendum, now included under the single term Direct Legislation.

Initiative and Referendum.

The **Initiative** enables the people to enact desirable measures by direct popular vote, when such measures have been or are likely to be ignored, pigeonholed, amended out of shape, or defeated by the legislature. Measures passed in this way may be entirely new laws, or they may, of course, amend or repeal existing laws.

The **Referendum** enables the people, by direct popular vote, to veto recent enactments of their representatives.

The Initiative corrects sins of omission.

The Referendum corrects sins of commission.

The Initiative is set in operation by volunteer groups of citizens,—civic, labor, or mercantile organizations,—

who draw up laws which they think good for themselves, or the public, or perhaps both. If they can get a certain moderate percentage* of the voters of the city or State to sign the requisite petition the measure goes to the council or legislature, and if this body refuses to adopt it within a specified time without amendment, the measure must be transmitted unchanged to the people for their decision. If the legislative body thinks it can produce a better enactment to the same effect, it may draw it up and send it to the people, with the other, as a competing measure. The voters then choose between them, or reject both. In some jurisdictions, notably Oregon, initiative measures go directly to the people without previous submission to the legislature. Other modifications in details may be expected with time.

The Referendum, likewise upon petition, brings newly passed legislation to the popular tribunal for veto or confirmation,—and confirmation of some laws may be as important as the veto of others.

The need of interference with the work of the representatives is greatly reduced by the mere existence of the system, and the number of laws actually coming to popular vote is a small fraction of the whole.

The Recall and its Relation to Direct Legislation.

Direct Legislation is likely to result, before being long in operation, in the establishment of the Recall, which is the properly guarded power of removal of unsatisfactory officeholders before the expiration of their terms. Thus the people gain the power of removal, the logical supplement to their already existing power of election.

The Recall, though obviously a device indispensable for popular control, and usually, in city charters, established simultaneously with Direct Legislation, will not be dis-

*The number of signatures required in these petitions ranges, in different states, from five to eight per cent of the voters for initiative petitions for ordinary laws; from eight to fifteen per cent for initiative petitions for constitutional amendments; and from five to ten per cent for referendum petitions. The usual percentages are eight for initiative, and five for referendum petitions, though the tendency in the more populous states is wisely to reduce the former figure, and to turn to fixed numbers instead of percentages.

cussed further here. It should be looked upon as one of the numerous desirable but subordinate measures, like Preferential Voting, Direct Nominations and the Short Ballot, which may safely be left to be gained by subsequent enactment in the larger jurisdictions like our states. This is strikingly true in Massachusetts where the Recall has been suggested, if not actually authorized, in the Constitution since its adoption in 1780, as will be seen from Art. VIII of that Constitution quoted below, and could, possibly, unlike the Initiative and Referendum, be made operative without constitutional amendment.

Furnishing Information to Voters.

The Initiative and Referendum, as now advocated, carry with them, of course, adequate and systematic means, independent of the newspapers, of furnishing each voter the full text of the measures to be voted on; the condensed form in which they will be printed on the ballot; statement of the reasons for and against each measure; and the names of those behind each proposition.

In Oregon, the Secretary of State edits this information and mails it in pamphlet form to each voter in the State fifty-five days before election. At least eight weeks have elapsed by that time since the circulation and filing of the petitions. This is found to afford ample time for deliberation and discussion, and the pamphlet provides an adequate basis for decisions. Those who wish to insert arguments in this pamphlet pay the cost of paper and printing—some eighty dollars per page—and the State bears the rest of the cost of the pamphlet and its distribution. In initiative cases, supporting arguments are accepted from none but duly accredited representatives of the friends of the measure; any one who will pay the cost, however, may insert arguments against such a measure. In referendum cases arguments upon either side may be inserted by any

one willing to pay the cost. In the election of November, 1912, when thirty seven measures were acted upon by the electorate, the State Pamphlet was a document of two hundred and sixty-two octavo pages.

Oregon voters protect themselves still further from false or misleading campaign literature by a provision of their admirable Corrupt Practices Act—a comprehensive measure, based on English practice, which came from the people by the Initiative—which prescribes a heavy penalty for circulating political literature, unless it bears the names of its authors and publishers.

In Oklahoma, there is a State Pamphlet for informing voters as in Oregon, but with some interesting differences in detail. In Oklahoma, as is proposed in Massachusetts, initiative measures go first to the legislature. Hence all popular voting is upon measures which have had recent legislative action. A joint committee of House and Senate is therefore naturally called upon to prepare the arguments supporting the legislature's position. The opposing argument is drawn up by a committee representing the petitioners.

The argument for each side of each measure is restricted by the Oklahoma law to two thousand words, one-fourth of which may be in answer to opponents' arguments. The direct argument on each side is prepared and submitted to the Secretary of State, who transmits it to the opposing side to serve as the basis for the rebuttal just mentioned and thus complete the argument. These arguments on all the questions are then assembled in the State Pamphlet and distributed to all the voters of the state a suitable number of weeks before the election. The cost of printing and distribution is borne by the public treasury.

The Oklahoma plan has some striking merits. It requires the Legislature to state the reason for the action which it has taken. Doubtless this reason is often good

and sufficient, but perhaps more certainly so when the lawmakers know in advance that they may have to defend their position. The legislature's views on the measure should be of great value to the voters.

More important still, it ensures the presentation of a negative argument. Experience in Oregon has already shown that a negative argument is not always forthcoming when left to be supplied by volunteers. A campaign of silence is sometimes wisely preferred by interests at whom an initiative measure is aimed, to the revelation of weakness which would result from a formal attempt at defence. They well know that voters are likely, from sheer force of habit, thoughtlessly to concede more in the defence of a long established wrong than its beneficiaries would dare claim for it. The Oklahoma plan of informing voters requires each side to show its hand. Bluffing is eliminated. Privilege has to come out in the open and state such case as it has. Silent contempt is not permitted to do duty as argument.

Both the Oregon and the Oklahoma systems of disseminating information do much to forestall the misleading of voters through the newspapers. Some expense is involved, but this point is not apt to be pressed except by those opposed to the whole system on other grounds. The body of voters well understand that one bad law or one carelessly granted franchise may cost the public in actual dollars and cents many times the cost of the State Pamphlet.

Hopeful Outlook for Representative Government.

Supplemented by the Initiative and Referendum, to serve as a permanent background and for application when called for, the representative system will gradually but surely enter upon a period of honor and usefulness hitherto never surpassed and probably never equaled. Relieved of the unnatural excess of power under which they

now stagger and sometimes fall, legislative bodies will cease to be attractive objects for bribery and secret influence. Log-rolling will greatly diminish. The power of bosses and rings will be undermined. Seats in the legislatures will then begin to be unattractive to grafters. At the same time they will become more attractive to high-minded, public-spirited citizens. There will be a fairer chance that a man clean when elected will stay clean. It will make it safe to reduce the size of legislatures and to diminish greatly the number of elective officers. The party machines and bosses once permanently out of control, we may reach the point of competing successfully with the corporations in attracting the best young talent to the public service.

With Direct Legislation in vogue, it is not necessary to retire a faithful legislator to express disapproval of some of his measures. The electorate, while returning the man to office, can overrule the measures with no more reflection on his honor or usefulness than is involved in the overruling of a lower court by a higher. Honest and able representatives are hence likely to be repeatedly re-elected. Long tenure is as valuable to public as to private business. Where the people have been in control long enough for this result to show as in Switzerland and in the New England towns, they are seen to act upon this principle. In Switzerland it is rare that a new member appears in a legislative body except to fill a vacancy due to death or voluntary retirement. In New England towns it is common for faithful officials to be retained in office practically for life, their annual re-elections being frequently uncontested.

With a seat in the legislature thus robbed of its charms for all but the public-spirited, and with re-election practically assured to men of proved merit, real legislative experts in good number may gradually be developed.

Representative Government Yet to Be Given a Fair Trial.

In view of such untested possibilities, it is beside the mark to wonder whether representative government is a failure. We begin to realize that it has not yet been fairly tried, at least not in recent years. We realize that our legislators have been working under almost intolerable conditions. They have been continually exposed to temptations that no ordinary man ought to be asked to face, and it is a tribute to human nature that so many of our legislators have stayed straight. Under Direct Legislation legislators will have all the power that is ever accorded to representatives and agents in business, which is all that is wholesome or attractive to worthy citizens of a democratic republic. That final enacting power is far from essential to the dignity of a legislative body is shown by the universal respect in which our American constitutional conventions have always been held.

Improved Status of the Voter.

While enough power is thus left with the representatives, a salutary increase of responsibility is thrown upon the voter. It brings him, to some purpose, into closer touch with great affairs. It enables him to vote for measures apart from men, and for men apart from measures. He can begin to assume the stature of a man, to become a sovereign in fact as well as in fancy. It will enable him to settle something at an election besides the party label of officeholders, which in turn settles little except which faction shall dispense the spoils of office. For we know only too well that platforms are "merely to get in on, not to ride on." Even if they were expected to be observed, platforms are composites which rarely represent, except in the roughest way, the views of any one thoughtful voter.

Simplicity of the Voter's Task.

The new task proposed for the voter, though inspiring, is relatively simple. It differs widely from legislation in the ordinary sense.

The originating and drafting of bills can manifestly never fall as a burden on the mass of the voters. For this service the community can always command ability as wise, disinterested and as practised in legislation as any who now do such work. The average voter's part in the work is deliberation, discussion and the registry of his decision. This is no new task for him; the only novelty is in having a chance to do it intelligently, and to see his decision go into effect.

The voter, going into the booth, has known for months just what is coming up and in just what form it is coming up. There is no thought of possible amendment. With regard to each measure he has simply to approve or reject. He has had plenty of time to make up his mind. If a measure is objectionable in purpose or form, or is lacking in clearness, he will of course reject it and await—or cause—its reappearance in a more acceptable form at a subsequent election.

The voter is thus more like a juror than like a legislator. His capacity for intelligent, discriminating work at a single election is therefore large—much larger, as experience shows, than at first thought might seem possible.

In 1909, for example, the voters of Portland, Oregon, in a city election, besides voting for mayor and other officers, voted discriminatingly and with sustained interest on thirty-five measures, thirteen of which they passed. The average vote on each of the thirty-five measures was slightly over eighty-one per cent of the total vote for mayor, with a range from seventy-five per cent to ninety per cent. The majorities, both yes and no, were sometimes large, sometimes small. There is every evidence that the voting in each case reflected the calm judgment of the voters.

In Denver, in the election of May, 1910, the voters, besides electing city officers, dealt discriminatingly with a list of twenty-one measures, some of them trickily worded. Moreover, in this case, they had to face an enormous corruption fund and all that the combined party machines, and selfish interests could do to mislead. The result was a triumph for the people at every significant point.

The people's capacity for Direct Legislation is not likely to be subjected to severer tests than it has already stood with signal success.

New Talent Freely Enlisted for Public Service.

Through Direct Legislation, the State will offer an attractive field of usefulness for such of her citizens as do not care to give up their whole time to public life. Public-spirited citizens, without dislocation of business or profession, may and will devote a much larger share of their time than now to the consideration of public questions. If they conceive of a desirable step in legislation, they will not have to contrive to get into office and to stay there long enough to accomplish their ends. They have a dignified and honorable method of presenting to the final authority, for adoption or rejection, the best fruits of their labors, free from the risk of mutilation or distortion by ill-informed, overworked, or corrupt legislatures. This alone would be a powerful means of bringing spontaneously to the public service, and at no expense, a large amount of talent of the best possible sort for which there is now little encouragement in public life. This is the talent on which we might well depend for the most serious law making, but which we have had, thus far, too little chance to utilize. The legislature will thus be facing a reasonable and wholesome competition and the pubic cannot fail to profit thereby.

Direct Legislation a Safeguard against Mob Rule.

Sometimes officeholders or party machine men profess a great fear that Direct Legislation will result in "mob rule." This must be taken to mean that they fear, probably with reason, that the people, after weeks of deliberation and with adequate information, would not support their pet schemes. Prospective abundance of popular majorities in their favor would neither excite their protests nor be called by them "mob rule." No ; mob-action finds a more promising field in nominating conventions, and even town meetings than in the long process of gathering signatures, weeks of discussion and deliberation, and the quiet vote on an Australian ballot in isolated, individual booths.

Direct Legislation is not only a safeguard against mob rule, but against the only thing likely with us to lead to violent revolution, namely, machine rule for the benefit of the privileged few. Majority rule precludes both mob rule and machine rule, for majority rule brings into play the great patient mass of honest, hardworking citizens, ordinarily silent and little felt. They abhor alike the violent methods of the mob and the intriguing of "politics." No less do they shrink from making themselves individually conspicuous in hopelessly protesting against powerful wrongs which they can, though they ought not to, endure. They are likely to suffer in silence until driven to extremes, rather than seek relief through the distasteful and inadequate means now at their disposal.

To provide the people with orderly and regular means of expressing themselves on equal terms with all their neighbors, with the certainty that their will thus expressed will take effect, is the logical way to ensure the healthy and natural progress which in the long run is the only preventive of violent upheaval.

Deeper Value of Direct Legislation.

An additional advantage in Direct Legislation is the education which it affords the average voter. One cannot help believing that the consequent toning up of the public standard of thought and morals would be in the long run the most important feature of the system. Direct Legislation tends thus automatically to produce a highly trained and self-respecting electorate, and to lay the deepest and most promising foundation for permanent good government.

Direct Legislation is the only orderly means known for accurately and unmistakably expressing the public will as to legislation, and for making it prevail. It gives at last a fair approach to a proper and worthy means of registering public sentiment, well defined by some one as "the deliberate and reasoned judgment" of the people. It is as effective a balance wheel against mere popular clamor as it is a safeguard against the silent scheming of the crafty few. Direct Legislation thus opens for the first time a fair prospect for the early realization of the cherished American ideal—a government by as well as of and for the people.

Development of Direct Legislation.

The Direct Legislation idea is no novelty among free peoples. It may be seen in the institutions of the Plymouth Colony. It appears in our time-honored New England town meeting and the even more ancient Swiss Landesgemeinde, and German folk-moot, all of them perfect exemplifications of the Direct Legislation principle on a small scale. It appears in our popular ratification of state constitutions and their amendments, usually insisted upon from the first, in spite of the pitifully inadequate facilities of our early days.

More recently, we note the steady extension of Direct Legislation through the Initiative and Referendum from canton to canton in Switzerland, its application to Swiss

federal legislation—the Referendum in 1874 and the Initiative for constitutional amendments in 1891—and its adoption in the last decade by city after city and State after State in this country. Direct Legislation (usually accompanied from the start by the Recall) is an essential feature of nearly all modern city charters, and those without it will doubtless have to add it sooner or later to get satisfactory results. Notable among the Direct Legislation cities stand Los Angeles, Denver and Cleveland besides scores of the so-called commission-governed cities such as Des Moines, Spokane and Grand Junction, Col. The Direct Legislation states are South Dakota, Oregon, Montana, Oklahoma, Maine, Missouri, Arkansas, Colorado, Arizona, California, Ohio, Nebraska, Nevada, Washington and Michigan.

Now, in 1913, constitutional amendments for establishing the initiative and referendum have passed the legislature and are before the voters for adoption in North Dakota, Wisconsin, Minnesota and Texas.

The initiative and referendum are in force to-day in every American state, but two, in which they have come to popular vote. These two are Wyoming and Mississippi. In 1912 these two states fortunately defeated measures overburdened with restrictions, although, by votes of six to one and nearly two to one respectively, their voters at the same time went on record in favor of the principle of the initiative and referendum.

The vote by which each state adopted these measures, with the date, is as follows:

State	Year	Yes	No
South Dakota	1898	23,816	16,483
Utah	1900	19,219	7,786
Oregon	1902	62,024	5,668
Nevada (Referendum only)	1905	4,393	792
Montana	1906	36,374	6,616
Oklahoma*	1907	180,333	73,059
Maine	1908	53,785	24,543
Missouri	1908	177,615	147,290
Arkansas	1910	91,363	39,680
Colorado	1910	89,141	28,698
Arizona*	1911	12,187	3,822
California	1911	168,744	52,093
New Mexico* (Ref. only)	1911	31,724	13,399
Ohio	1912	312,592	231,312
Idaho (Init.)	1912	38,918	15,195
" (Ref.)	1912	43,658	13,490
Nebraska	1912	189,200	15,315
Nevada (Initiative)	1912	9,956	1,027
Washington	1912	110,110	43,905
Michigan (Const. Init.)	1913	204,796	162,392
" (Legis. I. & R.)	1913	219,057	152,388

*Vote on state constitution.

It should be stated that in some of these earlier states the measures are largely inoperative through excessive restrictions, as in South Dakota and Montana, or through failure of the legislature to provide the requisite detailed legislation carelessly left to it in the amendment, as in Utah and Idaho. For this reason these two states were not named in the first list on the opposite page.

The people of Illinois passed advisory votes in favor of the initiative and referendum by 428,469 to 87,654 in 1902, and reaffirmed this verdict by 447,908 to 128,398 in 1910. In spite of this, their legislature has thus far failed to respond with the desired legislation.

How It Works in Switzerland.

For examples of the effect to Direct Legislation, we naturally turn first to Switzerland, where it has been in operation on what may be called a large scale for fifty to eighty years. With the aid of Direct Legislation as a result of its moral influence as well as by its direct application, Switzerland has, *wherever she has applied it*, rid herself of the misrule and exploitation which were previously rampant, as they had been for centuries, in all but the minute but ultra-democratic cantons.* Thanks to sound democratic idealism supported by suitable machinery for its expression she has now come to be an admirably governed country.

Mr. James Bryce, recently British ambassador to the United States, declared to a Cambridge audience in 1904 that Switzerland is the most successful democracy that the world has ever seen.

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*It is to these little cantons, including less than ten per cent of the area, and less than seven per cent of the population of the present whole country, that Switzerland owes her otherwise quite undeserved reputation for century-old free political institutions.

Further expert testimony to what is generally known and admitted by the well-informed and disinterested is hardly needed, but the New International Encyclopedia in its article on Switzerland, expresses it so naïvely that it may be worth citing. After a lengthy account of the civil wars and political turmoil in the early part of the nineteenth century, it disposes of the rest of the century with the single remark that "the history of Switzerland for the past quarter of a century has been very uneventful, though marked by a steady material, intellectual and political growth."

All this does not mean that Switzerland is an unalloyed paradise. Some of the great human problems seem as far from solution in Switzerland as elsewhere. It does mean that the government promptly reflects public sentiment, and at the same time is free from violent fluctuations of policy. It means that the government is administered efficiently, and in the interest of the public good. It means that Switzerland, with a form of government modelled largely upon our own, by a modification which might have been suggested by our Declaration of Independence, has secured good government in a democratic republic.

Old-Fashioned Methods Survive in One Canton.

The excellent results in Switzerland are to be seen not only in her federal affairs but also in the affairs of an overwhelming majority of her cantons. We must not, however, overlook Canton Fribourg, the only one of the twenty-two Swiss cantons as yet unable to equip herself with the Initiative and Referendum. She has still the unperfected or "pure" representative system characteristic of our American states and cities and of the old times in the rest of Switzerland. This brings with it, there as here, boss-rule and all that boss-rule implies. The legislative body is nominated by the boss, elected by the people

and managed by the boss. Prominent citizens are skillfully kept in line by a share in the plunder for themselves, or for their churches or philanthropies, or by fear of loss of favor with the two chief banks, both creatures of the boss. There is bribery, extravagance, subordination of the general interest to private business, the heaviest per capita cantonal debt in Switzerland, and the public apathy which naturally follows wide-spread hopelessness. The agitation for the Initiative and Referendum is still kept up by Fribourg patriots as their only hope, but all orderly means of success are in the control of the boss who, of course, fights them and will fight them for his political life.*

Initiative and Referendum Most Developed in Important Centers.

As a contrast to Fribourg, it should be observed that the chief cantons of Switzerland, Berne and Zurich, the former a farming, the latter a manufacturing canton, both far in the lead of their neighbors in population and importance, are among the cantons having the Initiative and Referendum in their most radical and readily workable form. Zurich is clearly the most advanced of the cantons in this respect, and Berne is surpassed, and at that only slightly, by few besides Zurich.

In short, where the Initiative and Referendum are most readily set in motion, there have developed clean government and leadership in civic and industrial growth. In the only canton where there is neither the Initiative and Referendum nor pure democracy, there is misrule and political apathy of the familiar American type.

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* This bit of evidence from Fribourg is drawn from an article entitled "The Only Political Boss in Switzerland" by George Judson King, Secretary of the Ohio Direct Legislation League, in the Twentieth Century Magazine for July, 1910. The article is based on recent personal observations in Canton Fribourg.

Switzerland an Adequate Precedent for American States and Cities.

The Swiss success under perfected representative government may reasonably be expected to be repeated in this country, for the strength of the system lies in giving common human nature a fair chance to do itself justice. Human nature in Switzerland is very much like that elsewhere. That it is like that in this country is to be seen from the fact that representative government without direct popular control results in demoralization and bad government there just as it does here, and in just the same way there as it does here.

It is sometimes suggested, however, that little Switzerland, good as her results are conceded to be, is not an adequate precedent for an immense nation like the United States. But a small nation may exemplify a principle essential to the success of a large nation. An ocean liner must obey the laws of steam-engineering as well as a tugboat. A sound fundamental principle holds regardless of the scale of the enterprise. That a self-governing people must have effective control over the laws under which they live would seem to be a principle of this kind. Details may require adjustment, but the principle will hold. But all that aside, the important comparison is not so much with our nation as with our cities and states. Switzerland, unhomogeneous in population, pre-eminently a manufacturing nation, larger than Massachusetts, Rhode Island, and Connecticut combined, with a population slightly larger than that of Massachusetts is plainly an excellent precedent for the adoption of Direct Legislation by individual American cities and States.

Moreover there may never be need for a federal Initiative and Referendum system for this country. With the rings once permanently ousted from our cities and states, the federal government should automatically run

clear. For the rings that do the plundering at Washington could manifestly not long survive without their intrenchments in the cities and states. At any rate, it is obviously correct tactics now to go right ahead for the Initiative and Referendum in states and cities. Our only disappointments with it, judging by experience elsewhere, are likely to arise from excessive restrictions which the legislatures may impose upon it.

New England States Especially Fitted for Direct Legislation.

New England, the home of the town meeting, enjoying the inspiration of the Massachusetts and other New England States Constitutions, with Maine already in the Direct Legislation ranks, may be expected to take especially kindly to this new and long step toward the realization of her ancient ideals.

The real questions for us in New England to answer are:

1. Are we *now* as fit for this forward step as the Swiss *were* when they were putting the system in operation *thirty to fifty years ago?*

2. Is not even a complicated law, properly explained and vouched for, as suitable a thing for a popular vote as a choice between complicated candidates whose actions no one can foresee?

3. Is not an occasional vote on an ordinary law a natural and reasonable addition to our time-honored system of popular votes on State constitutions and their amendments?

4. Is it not worth while to disentangle measures from men and submit to popular vote definite and distinct propositions instead of mixtures of candidates, parties and platforms?

Encouragement from Oregon.

To ask these questions in America is to answer them in the affirmative. All parts of the country are coming to see the point. Oregon, nearly half as large again as all New England combined, is setting us a most encouraging example.

In 1902 she adopted Direct Legislation. She was then deep in political corruption. Thanks to the Initiative, and measures secured with it which legislatures had refused to pass, she has made great progress toward better government and the house-cleaning is going right on.*

The outcries of the local plunderers show that they feel their power slipping away. Their intrigues for the destruction of the Initiative and Referendum show that they know the cause.

What the Fathers were Trying to Do.

We shall be interested to see how Direct Legislation fits in with the ideas of our wonderfully far-sighted and successful constitution framers. It will be worth while to quote a few passages from the Constitution of the Commonwealth of Massachusetts—the oldest of their works—the spirit of which is no stranger in other parts of the country. Articles V, VII, and VIII of that honored document will give the ideas of the fathers on the relation of the people to their representatives:

Article V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

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* See the speech of Senator Bourne of Oregon in the U. S. Senate, May 5, 1910 (obtainable from the Massachusetts Direct Legislation League), for an extended description of this remarkable work. Senator Bourne, a Republican, and by birth a Massachusetts man, and his colleague, Senator Chamberlain, a Democrat, born in Mississippi, are alike active advocates of the Initiative and Referendum, after observing its eight years of operation in their home state.

Art. VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter or totally change the same, when their protection, safety, prosperity, and happiness require it.

Art. VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Lack of Steam and Electricity the Obstacle to Direct Legislation at the Outset.

On reading these sturdy New England doctrines one must conclude that the only reason why the fathers did not then and there establish Direct Legislation for the State and for cities as they might develop, was that it was at that time physically impossible. Mechanical invention had not advanced far enough to permit it even if they had conceived the idea. We must not forget that their facilities for disseminating information and gathering returns were little superior to those of Julius Cæsar. They knew no more of railways than Cæsar did, such highways as they had were not so good as Cæsar's. But they resolutely did all that was practicable under the mechanical conditions of their time. They provided an obligatory referendum on the adoption and amendment of the Constitution of the Commonwealth, even though it might and did take weeks to put the matter to vote and get the returns. And it is clear that nothing was farther from their minds than that the will of representatives should prevail over the will of the people, some modern officeholders to the contrary notwithstanding.

Now that Direct Legislation, as a working institution on a large scale, has become a possibility through the introduction of the modern means of spreading news and ideas by the telegraph, high-speed printing press, and the railway, we can proceed from the point where the fathers were forced to stop and can vindicate more clearly than ever the soundness of their noble idealism.

An Attractive Outlook.

In closing it may be said that the Initiative and Referendum appeal particularly to progressive Americans in whom still lives the spirit of the liberty-loving men who founded this nation. Such citizens readily comprehend the necessity of controlling the important RESULTS, and of not limiting themselves to toying at government while privilege does the governing. They take great satisfaction, moreover, in a remedial measure so thoroughly in harmony with the old ideals and institutions. It involves, after all, only a bit of additional machinery, and depends for its success only upon our fitness for self-government.

Of course Direct Legislation is only a piece of mechanism. It will not suffice merely to set it up. It must be made to work promptly and with vigor when required. This will take real citizens. Oregon shows that such citizens still exist—some of them of New England or other American stock, some of them born in old-world monarchies.

The success in Switzerland; the steady progress and gratifying results in America; the strenuous opposition by favorites or managers of political machines; the misrepresentations by professional lobbyists and conspicuous office-holders, echoed in ex-parte "editorials," all indicate that the Initiative and Referendum are measures justly des-

tined to receive an increasing amount of public attention and regard.

With the Initiative and Referendum in force, we shall be equipped as never before to resist enemies from within; enemies far more dangerous to our freedom than any foreign foe.

The Initiative and Referendum may well be the means of instituting on a permanent basis the responsible kind of representative government which our fathers lived and died to secure.

The Initiative and Referendum may well prove to be the salvation of the momentous experiment led by Jefferson, Hancock, Franklin, the Adamses and Washington.

APPENDIX I.

Dangerous Jokers.*

Now that the demand for the Initiative and Referendum is becoming irresistible, the public must be on guard against the subtle dangers peculiar to this stage of the movement. The opposition may now seem to yield while actually conniving at the enactment of an unworkable sham, which may be worse than useless,—for popular disappointment in the working of mere half-way measures, adopted in the name of reform, is a most potent ally of civic apathy and reaction.

A favorite way of producing a sham measure is by inserting or manipulating a few words so as to produce one of the six jokers described below. The sugar coat within which the public is induced to swallow them is smooth talk about "safeguarding" the Initiative and Referendum or "protecting" it from "abuse." The uniform result is violation of the people's right to effective supremacy in legislation, and a new lease of life for invisible government.

Joker No. 1. *Restricting the Initiative to statute laws, and thus withholding from the voters power to adopt amendments to the state constitution over the head of the legislature.*

Obviously, since the constitution is the fundamental law, the Constitutional Initiative is the vitally essential feature of Direct Legislation. Some of the most prolific sources of social unrest are constitutional provisions whose repeal legislatures will not permit. Fortunately, only six of the states rated as Initiative-and-Referendum states are without the Constitutional Initiative, viz.: South Dakota, Utah, Montana, Maine, Washington and Idaho.

Joker No. 2. *The requirement of an impossible or too difficult majority for enactment or rejection of a measure by the people.*

This joker takes the form of an innocent looking stipulation that the majority required for enactment of an initiative measure or rejection of a referendum measure shall be a majority "of all the votes cast *at the election*," or "of *the total registered vote*." Either is practically fatal to the usefulness of the measure. In practice this joker is tantamount to requiring a two-thirds to even a five-sixths or even heavier majority of the voters who vote to overrule the legislature.

Stripped of all pretense, Joker No. 2 is a requirement that those nominal voters who are too ignorant or indifferent to vote one way or the other on a measure shall always be counted as having voted *against* an Initiative measure and *for* a Referendum measure, *i.e.*, shall be counted so as to maintain the supremacy of the legislature and override a majority of the thinking, voting portion of the electorate.

Joker No. 2 should meet particularly short shrift in Massachusetts where for a century and a third constitutional amendments have always been accepted or rejected by the majority of those voting on each. Massachusetts has never used the combined Don't Knows and Don't Cares as a ready-made avalanche

* These jokers were first categorically exposed in *Equity* of January, 1913, from which Appendix I is to some extent taken. Additional on these jokers can be obtained from the National Popular Government League, Judson King, Secretary, 913 Munsey Bldg., Washington, D. C. Mr. King's help in the preparation of Appendix I is gratefully acknowledged.

with which to overwhelm the majority of voters who vote. We may believe she never will.

This joker met a deserved and picturesque fate in 1912, where the reactionaries tried to slip it into the Oregon system. Two of the thirty-seven measures on the ballot were for this purpose: one submitted by the legislature, one by Initiative petition—fathered by a "Majority (!) Rule League." The scorn for both measures was such, in that experienced community, that the negative vote in their two-to-one rejection actually did roll up to the very unusual figure of more than the very majority which the joker itself was intended to establish.

Only one of the forty-one amendments to the Constitution of Massachusetts now in force got an affirmative vote as great as a majority of the votes cast in the same election for governor. That was one adopted in 1833 by a vote of 32,354 to 3,272, while the total vote for governor was 62,474. Under Joker No. 2, if there had been 1,200 fewer "yes" votes the amendment would have been lost, though favored by nearly ten to one vote of those who took the trouble to vote on the subject.

The proper, fair and usual requirement is that any measure shall be decided by a majority of the votes cast *thereon*.

Joker No. 3. *The requirement of an unreasonably large number of signers or other burdensome restrictions upon petitions.*

Clearly if the labor of filing a petition is too great the Initiative and Referendum is useless. In Massachusetts where, for generations, ten voters have had the power to work the Initiative in town affairs by putting in the town warrant a measure which can be settled only by vote of the whole town, the requirement of 50,000 signers and 25,000 signers for state petitions of similar purport seems quite high enough.

Besides calling for too many signers, there may be a burdensome and illogical stipulation that the signers shall come in certain arbitrary proportions from various parts of the state. This is an absurd infraction of equal rights—a voter is a voter regardless of where in the state he lives and none should be arbitrarily discriminated against because he lives in one county or another. So far as this joker arises from an honest desire to keep local matters off the state ballot, there should be the same desire to keep them out of the state legislature—which can be done by suitable home rule provisions.

Other pettier but equally dangerous restrictions are likely to appear, but they should not deceive any who really intend that the Initiative and Referendum shall *work*.

Joker No. 4. *Framing the "emergency clause" so that the legislature can too readily annul the Referendum.*

Exemption of measures from the Referendum is unquestionably desirable in occasional emergencies, but great care must be taken that none but *bona fide* emergencies are called such. A two-thirds yea and nay vote by the members of each house upon a separate section, declaring the emergency to exist and setting forth the reasons for emergency action, should be required for establishing an "emergency." The granting of franchises as "emergency measures" should be specifically prohibited.

An inadequately guarded emergency clause can be a large hole through the Referendum.

Joker No. 5. *Putting an arbitrary limit on the number of measures which can be submitted to the people at any one election.*

This is an old scheme which has worked great hardships. Of course it is an invitation to fill up the ballot promptly with trivial proposals, and thus keep measures of importance waiting indefinitely. Subservient legislatures, particularly in Illinois, have made much of such chances.

Joker No. 6. *Failing to provide an adequate and efficient means of informing voters regarding the measures submitted to them.* The only safety for predatory interests is to keep the voters in ignorance or misinformed. The only safety for the state is the opposite. Newspapers of course do not at all meet the need. A state publicity pamphlet combining the best features of the Oregon and Oklahoma pamphlets must be insisted on. The ack of such a thing is a weak point in the traditional Massachusetts practice in referenda on constitutional amendments. This and their frequently uninteresting character will doubtless explain the slight attention they sometimes get from the voters.

Other methods of producing an honest-looking sham measure can doubtless be devised, notably by ambiguous or incomplete wording, but it is believed that the foregoing indicates the most subtle and serious dangers thus far brought to light.

APPENDIX II

The precise terms of the enactment which may be considered best suited to establish the initiative and referendum in Massachusetts, can be seen in the proposed amendment given below in full. This bill is substantially the one agreed upon early in 1913 by Massachusetts advocates of Direct Legislation irrespective of party, and as such introduced in the legislature of that year as a substitute for House Bill 1239. This bill, framed particularly to fit Massachusetts methods and traditions, may properly be called the Massachusetts Plan. It is intended to secure deliberate but effective popular control in legislation, with a minimum of disturbance of inherited methods, a minimum cumbering of the ballot, and a maximum of co-operation by the legislature in the discussion and perfection of initiative measures. Its provision for friendly amendments of such measures by the legislature is the most important and significant new feature in the Massachusetts Plan.

ARTICLE OF AMENDMENT.

The Legislative authority of the Commonwealth is vested in the general court; but the people reserve to themselves the Initiative which is the power to propose laws, resolves and amendments to the constitution, and to enact, adopt, or reject the same at the polls without the concurrence of the general court or of the governor; and the people also reserve to themselves the referendum which is the power at their own option to approve or reject at the polls any law or resolve of the general court or any part or parts thereof.

CONSTITUTIONAL INITIATIVE.

If an Initiative petition for an amendment or amendments to the constitution is introduced into the general court, signed by at least fifty thousand qualified voters of the commonwealth, and the general court into which it is introduced shall fail to agree to such amendment or amendments as provided in the ninth article of amendment to the constitution, either in the original form set forth in such initiative petition or in such amended form as shall be approved, before final action thereon in either branch of the general court, by

the proposers hereinafter provided for, then such amendment or amendments in such original form, or, if amendments have been offered in either branch of the general court and approved by such proposers, then in a form so amended, shall be deemed referred to the general court then next to be chosen and shall have the same standing therein as if once agreed to; and if the general court next chosen as aforesaid shall not agree to such amendment or amendments as provided in the ninth article as aforesaid, then such proposed amendment or amendments shall nevertheless be submitted to the people in the same manner as if agreed to by two successive general courts; and if such amendment or amendments shall be approved by a majority of the qualified voters voting thereon, such amendment or amendments shall become part of the constitution of the commonwealth.

LESIGLATIVE INITIATIVE.

If an Initiative petition for a bill or resolve is introduced into the general court, signed by at least twenty-five thousand qualified voters of the commonwealth, and the general court into which it is introduced shall fail to enact such bill or to pass such resolve either in its original form as set forth in said initiative petition or in such amended form as shall be approved, before final action thereon in either branch of the general court, by the proposers hereinafter provided for, then such bill or resolve in such original form or, if amendments have been offered in either branch of the general court and approved by such proposers, then in a form so amended, shall be submitted to the people, at the next ensuing state election; and if such bill or resolve shall be approved by a majority of the qualified voters voting thereon, it shall, subject to the provisions of the contitution, become law and shall take effect in thirty days after such state election or at such time thereafter as may be provided in such bill or resolve.

INITIATIVE MEASURES, HOW INTRODUCED.—PROPOSERS.

An Initiative petition shall set forth the full text of the proposed constitutional amendment, bill or resolve which is the subject of the petition. Such petition shall first be signed by seven qualified voters of the commonwealth who shall constitute the proposers of such proposed constitutional amendment, bill or resolve. Such petition shall then be filed with the secretary of the commonwealth who shall provide blanks at the expense of the proposers for the use of subsequent signers. He shall print at the top of each of such blanks a clear and simple description of the proposed constitutional amendment, bill or resolve, which is the subject of the petition, and the names of the proposers thereof. The completed petition shall be filed with the secretary of the commonwealth, and, upon the assembling of the next general court, he shall transmit the petition to the clerk of the House of Representatives, and the proposed constitutional amendment, bill or resolve which is the subject of such petition shall then be deemed to be introduced into that general court and pending in the House of Representatives; provided that such petition may be received by the general court at any time.

The proposers shall have power, in case of a vacancy caused by the death, resignation or disability of any of their number, by unanimous vote of those remaining, to fill such vacancy from among the petitioners and shall have power by unanimous vote to approve amendments offered in either branch of the general court, to the proposed constitutional amendment, bill or resolve which is the subject of the petition. Certified copies of each vote of the proposers, whereby they fill vacancies in their number or approve amendments, shall forthwith be filed with the clerk of the Senate and the clerk of the House of Representatives, such copies shall be attested by the signatures of all the proposers.

NINETY DAYS ABEYANCE ON LAWS NOT EMERGENCY MEASURES.

No act or resolve passed by the general court shall take effect earlier than ninety days after the date of its approval by the governor or its becoming law without his approval, excepting acts or resolves providing for previously authorized expenditures, and excepting also acts or resolves declared to be emergency measures.

EMERGENCY MEASURE DEFINED.

An act or resolve declared to be an emergency measure shall contain a preamble setting forth briefly the facts constituting the alleged emergency and shall contain the statement that such act or resolve is necessary for the immediate preservation of the public peace, health or safety. A separate vote shall be taken on the preamble of such an act or resolve by a call of the yeas and nays and unless the preamble is adopted by a two-thirds vote of the total membership of the Senate and by a two-thirds vote of the total membership of the House of Representatives, the act or resolve shall not be an emergency measure. No grant of any franchise or amendment, renewal or extension thereof shall be declared to be an emergency measure.

REFERENDUM.

In case of any act or resolve passed by the general court, which is not an emergency measure or appropriation act or resolve, as above provided, if, within ninety days after such act or resolve is approved by the governor or becomes a law without his approval, a petition is filed in the office of the secretary of the commonwealth signed by at least twenty-five thousand qualified voters of the commonwealth, protesting against such act or resolve or any part or parts thereof, and asking for a referendum thereon, then such act or resolve or part or parts thereof shall thereupon be further suspended and shall be submitted to the people at the next ensuing state election, provided the petition is filed at least sixty days prior to the date for holding such state election, otherwise such act or resolve or part or parts thereof shall be submitted to the people at the next following state election; and if a majority of the votes cast thereon is in the affirmative such act or resolve or part or parts thereof shall, subject to the provisions of the constitution, take effect at the expiration of thirty days after such election or at such time thereafter as may be provided in such act or resolve; but if such majority is in the negative, such act or resolve or part or parts thereof shall be null and void.

If, in case of an emergency measure, after it becomes a law, a petition for a referendum upon such measure or any part or parts thereof is filed in like manner, such measure or part or parts thereof shall be submitted to the people at the next ensuing state election; and, if not approved by a majority of the votes cast thereon, such act or resolve or part or parts thereof, together with all rights and privileges thereby conferred, shall, at the expiration of thirty days after such election, become null and void.

GENERAL PROVISIONS.

The veto power of the governor shall not extend to measures approved by the people.

Measures approved by the people at the same time and in conflict in one or more of their provisions shall all take effect as to provisions not in conflict. In each case of conflicting provisions in such measures that one of the provisions in conflict shall take effect which was contained in that one of such measures which received the greatest number of affirmative votes, and all others of such conflicting provisions shall become void.

The enacting style of all acts or resolves submitted upon initiative petition and approved by the people shall be—"Be it enacted" (or "resolved" as the case may be) "by the people of the Commonwealth of Massachusetts and by the authority of the same"; and this enacting style shall be deemed to be part of such act or resolve as approved. Acts or resolves submitted to the people upon referendum and approved by them shall have such approval recorded, with date thereof, upon the engrossed copy of the act or resolve and upon every copy thereof printed by public authority.

The secretary of the Commonwealth shall cause to be printed and distributed to each voter a sample ballot together with the full text of every measure to be submitted to the people and the general court shall provide for public dissemination of information and arguments thereon.

The general court shall provide by law for the certification of signatures to petitions referred to in this article.

Each proposed amendment to the constitution and each bill, act or resolve submitted to the people shall be described on the ballots clearly and simply by a description to be determined by the secretary of the commonwealth subject to review by a court of equity, and the secretary of the commonwealth shall cause each question to be printed on the ballot in accordance with the following provisions.

In the case of a proposed amendment to the constitution: Shall the proposed amendment to the constitution (here insert description) be approved and ratified?
Yes
No

In the case of a bill or resolve submitted upon initiative petition; Shall the proposed bill (or resolve) (as the case may be) (here insert description) become law?
Yes
No

In the case of an act or resolve submitted upon referendum: Shall an act (or resolve) (as the case may be) (here insert description) take effect?
Yes
No

In the case of an emergency measure submitted upon referendum: Shall an act (or resolve) (as the case may be) (here insert description) be approved?
Yes
No

The provisions of this amendment shall be self-enforcing. In order to carry the same into immediate effect, the secretary of the commonwealth and all other officers shall be governed by the general laws of the commonwealth, so far as applicable and not inconsistent herewith.

The votes upon an amendment to the Constitution or upon a bill, act or resolve submitted to the people as herein required, shall be taken, sorted, counted, declared, returned, opened and examined in the same manner as provided by law with reference to votes for state officers so far as such provisions may be applicable or as may be provided by law in a manner not inconsistent herewith.

All provisions of the existing constitution inconsistent herewith are hereby annulled.

It is likely that the 1914 bill will be on the same lines.*

*In considering this bill, citizens of other states should bear in mind that Massachusetts has regular annual elections and annual sessions of the legislature (locally called the "general court"). Some portions of this bill are clearly not suited to states with less frequent elections and sessions.

For readers wishing a fuller discussion of the initiative and referendum, it may be proper to refer to some of the most recent larger works upon the subject:

The Initiative, Referendum and Recall. Edited by William Bennett Munro. Appleton, 1912. 356 *pp.*

A collection of fifteen essays on different sides of the question by as many different authors, including one by the editor.

Government by All the People, or the Initiative, Referendum and the Recall as Instruments of Democracy. By Delos F. Wilcox, Ph.D. Macmillan, 1912. 324 *pp.*

The most recent monograph on the subject. Arguments pro and con are fully and readably considered. The verdict is favorable to the measures. The full text of the Ohio initiative and referendum amendment, adopted Sept. 3, 1912, is given.

Documents on the State-wide Initiative, Referendum and Recall. By Charles A. Beard and Birl E. Schultz. Macmillan, 1912. 394 *pp.*

A collection of all initiative and referendum constitutional amendments, in force and pending, significant statutes for carrying them into effect, six important judicial decisions, material relating to the state-wide recall, and an analytical introduction by Professor Beard (of Columbia University).

The Initiative and Referendum.—Arguments pro and con by a Special Committee of the National Economic League, consisting of Robert L. Owen, William Allen White, Frederic C. Howe and Lewis J. Johnson, favoring; and George Sutherland, Emmet O'Neal, Frederick P. Fish and Charles F. A. Currier, opposing. National Economic League, 6 Beacon St., Boston.

For a record of the progress of the movement, with able editorial comment, the reader is referred to *Equity,* a quarterly devoted wholly to the initiative and referendum and kindred topics. It is published by *Dr. C. F. Taylor,* 1520 *Chestnut St., Philadelphia,* at fifty cents per year.

The National Popular Government League (Judson King, Secretary, 913 Munsey Building, Washington, D. C.) is the national organization for furthering the Initiative and Referendum.

EDWIN L. SLOCOMB

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